



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on January 26, 2001

**NOTICE OF ACTION TAKEN -- DOCKETS OST-2000-6954 & OST-2000-6842 - 32**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicants: **British Midland Airways Limited and United Air Lines, Inc.**

Date Filed: December 19, 2000

Relief requested: [*Docket OST-2000-6954*] Amend exemption from 49 U.S.C. 41301, granted by Order 2000-7-27, to add authority to permit British Midland to engage in scheduled foreign air transportation of persons, property and mail between Manchester, England, and the coterminal points Chicago/Washington (Dulles), and (1) beyond Chicago/Washington (Dulles) to Austin, TX, San Jose, CA, Hartford, CT, Kansas City, MO, Orange County, CA, Salt Lake City, UT, Tucson, AZ, Cincinnati, OH, Indianapolis, IN, Minneapolis/St Paul, MN, Tampa, FL, Detroit, MI; (2) beyond Chicago to Baltimore/Washington, DC.

[*Docket OST-2000-6842*] Amend statement of authorization under 14 CFR 212 of the Department's regulations, granted by Order 2000-7-27, to add authority to permit United to place the airline designator code of British Midland on United flights between (1) Chicago/Washington (Dulles) and Austin, TX, San Jose, CA, Hartford, CT, Kansas City, MO, Orange County, CA, Salt Lake City, UT, Tucson, AZ, Cincinnati, OH, Indianapolis, IN, Minneapolis/St Paul, MN, Tampa, FL, Detroit, MI; and (2) Chicago and Baltimore/Washington, DC

Applicant representatives: Robert Papkin (British Midland) 202-626-6600; Jeffrey Manley (United) 202-663-6670

Responsive pleadings: American Airlines, Inc., filed an answer stating that the requested authority should be denied unless and until the Department grants the pending American/British Airways application to conduct bilaterally-authorized code-sharing services; and expressing its view that the Department should take no further action that would benefit and strengthen Star Alliance carriers, while members of the competing oneworld alliance continue to be denied code-sharing approval that is fully consistent with Bermuda 2. British Midland and United filed a joint reply stating that the Department has already fully considered American's arguments and found them unpersuasive; and that the limited expansion of their existing authority is consistent with the U.S.-U.K. Agreement and the public interest and would extend the same competitive benefits to additional U.S. cities.

**DISPOSITION**

Action: Approved

Action date: January 26, 2001

Effective dates of exemption authority granted: January 26, 2001 - July 24, 2002

Effective dates of statements of authorization granted: Indefinite

Remarks: We find that grant of the requested authority is consistent with the terms of the Air Services Agreement between the United States and the United Kingdom of Great Britain and Northern Ireland and the 1995 U.S.-U.K. Memorandum of Consultations, and that the public interest bases upon which we relied in Order 2000-7-27 remain valid and support our action here. We note that American has raised the same arguments it raised in opposition to the original applications in these dockets. In our order granting those applications (Order 2000-7-27), we stated that the American/British Airways application was under consideration on its own merits in Docket OST-99-6507 and that we did not see a public interest basis to withhold the requested authority until we reached a decision in that case, nor did we believe that competitive considerations justified linkage to the British Midland application. We find nothing in the record of this case that would lead us to reach a different conclusion.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Standard exemption conditions (attached)      ☐ Foreign air carrier permit conditions (Order - - )

☒ Statement of Authorization for British Midland and United code-share operations granted by Order 2000-7-27 dated July 24, 2000, and conditions therein.

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

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We found that the applicant was qualified to perform its proposed operations.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

## **FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY**

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
  - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
  - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).